

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)
)
) WC Docket 04-36
IP-Enabled Services)
)

REPLY COMMENTS OF THE AMERICAN FOUNDATION FOR THE BLIND

SUMMARY

The American Foundation for the Blind (AFB) is a leading national resource for people who are blind or visually impaired, the organizations that serve them, and the general public. The mission of AFB is to enable people who are blind or visually impaired to achieve equality of access and opportunity that will ensure freedom of choice in their lives.

AFB is pleased to support the comments of organizations of and for people with disabilities who urge the Commission to develop new regulations which will mandate access to the full range of IP-enabled services. The Commission must develop regulations for the new IP-enabled environment which will allow people with disabilities the same fluid, cross-platform access which increasingly characterizes the way everybody uses communications technology. We reiterate our concern and support these organizations' assertions that voluntary measures and market-based approaches, alone, will not provide access to IP-enabled communications. We believe that Section 255 provides a carefully constructed process for implementing accessibility standards, including access to network features, functions, and capabilities. Our review of filed responses convinces us that the Commission has the authority to regulate IP-Enabled services under Title I. We remain greatly concerned that the Commission does little to emphasize the requirements of Section 255 and that the Section 255 complaint process remains balanced against consumers with disabilities.

DEPLOYMENT OF IP-ENABLED COMMUNICATIONS REQUIRES A REACH BEYOND VoIP

The Commission is on target in stating that "IP-enabled services can be created by users or third parties, providing innumerable opportunities for innovative offerings competing with one another over multiple platforms and accessible wherever the user might have access to the IP network."¹ A review of current media reporting on telecommunications issues backs this analysis. The Commission is right to emphasize IP-enabled services as the starting point for its analysis. We are concerned that many of the responses, while providing some support for extension of Section 255 to VoIP services, generally urge the Commission to reserve such extension to services which connect to the public switched telephone network (PSTN) and to stop short of regulating information services.

¹ NPRM, para 4

We believe that this approach will not just seriously short change people who are blind or visually impaired, it will relegate them to the telecommunications version of “the back of the bus,” the legacy framework of the PSTN. While the PSTN will remain an important part of the framework of telecommunications, people will increasingly communicate in a ubiquitous multi-platform environment. One snapshot of this environment is provided by a recent Merrill Lynch in-depth report with the significant title “Everything Over IP.”

As our title suggests, we are increasingly convinced that “Voice Over IP” is not an isolated development. We see it as part of a broader change, a separation of the “network business” from the applications and content businesses. For now, the focus is on voice services and the fixed-line (cable and telco) networks. But the impact will continue, we believe, with far-reaching implications for other applications, including TV and for other networks, including mobile services.²

We join with others in urging the Commission, with respect to the reach of Section 255, to focus on function, not form, in determining a regulatory framework for access to IP-enabled equipment and services. The regulatory reach must extend beyond VoIP to include IP-enabled information services. Most notable among these responses urging this comprehensive reach, one we wholeheartedly support, is provided by the Rehabilitation Engineering Research Center on Telecommunications Access.

As the Commission notes, increasingly we are seeing a continuum of products that are capable of transporting conversation over a variety of platforms. There will be no clear breaks in this continuum and at times, it will be difficult or even impossible to determine where a particular product or service begins or where it ends. Artificially separating IP-enabled services into telecommunications or information services categories based on their underlying technology will cause serious accessibility gaps and confusion for consumers, and result in a very uneven playing field for companies who may end up following different rules for nearly identical services that happen to be provided over different transmission protocols. A distinction that was perhaps once helpful has outlived its usefulness.³

The comments filed by Self Help for Hard of Hearing People, SHHH, underline our concern about “the back of the bus” effect coming from a restricted, legacy-based framework of regulation.

Failure to extend the coverage of Section 255 to IP-Enabled services would undermine the original intent of Section 255. As the telecommunications industry shifts toward VoIP and away from the traditional switched access phone service, anyone who does not have access will be relegated to a lower class and discriminated against as far as being able to enjoy the same benefits and advances as those people who do not have barriers to access.⁴

VOLUNTARY OR MARKET-BASED APPROACHES WILL NOT WORK

We are dismayed that, on balance, the comments of the telecommunications industry remain focused on voluntary, market based approaches with respect to access by people with disabilities to the new world of IP-Enabled communications products and services. To be sure, a few comments, notably those of

² Everything Over IP, Global Research and Economics Group, Merrill Lynch, March 12, 2004.

³ Comments of the RERC on Telecommunications Access WC Docket 04-36, p ii

⁴ Comments of SHHH WC Docket 04-36 p.5

AT&T, Sprint, and MCI indicate support for extension of Section 255 to at least VoIP services generally or to those services which connect and operate through the PSTN. On balance, industry seems convinced that market forces and voluntarism will bring the access needed by people with disabilities. Clearly the ingenuity of the manufacturers and their service provider partners is high enough to retool product for the fast moving tastes of large markets. Unfortunately, the market drivers pushing these developments, profit and the competitive force of large numbers of mobile consumers, are not characteristic of the smaller and poorer market of people with disabilities.

We urge the Commission to note that comments provided by the disability community underscore our concern regarding the utility of voluntary, market-based approaches. Comments of the RERC on Telecommunications Access provide an excellent example:

That competition in the area of IP-enabled services is unlikely to deliver the same “highly customized, low-cost suite of services” to people with disabilities that are delivered to the general public is borne out by numerous historical events that have occurred in the field of telecommunications. These events have proven time and time again, that the mere proliferation of a particular service through competition in the marketplace is insufficient to take the place of regulation to safeguard the interests of people with disabilities.⁵

SECTION 255 AND ACCESS TO IP-ENABLED SERVICES

AFB’s comments in this proceeding noted that Section 255 provides a carefully constructed basis for defining equipment and services, implementing accessibility, and the level of effort which must be expended in achieving these goals. Review of the comments filed in this proceeding indicates that the advent of IP-Enabled platforms may significantly increase the scope and ease of the “readily achievable” modifications required by Section 255. For example, the joint comments of BellSouth, Qwest, SBC, and Verizon state:

The IP platform is widely viewed as much more flexible than the circuit-switched platform because it enables new features to be developed and deployed much more quickly and efficiently.⁶

THE COMMISSION HAS THE AUTHORITY TO REGULATE IP-ENABLED SERVICES

The Commission sought comment on the basis for asserting jurisdiction over IP-Enabled services. Historically, the Commission has relied on universal service obligations as contained in Title I of the Communications Act of 1934, as amended, to require disability access from the 1982 Telecommunications for the Disabled Act through the Hearing Aid Compatibility Act. AFB’s comments in Docket 04-36 assert that the Commission’s ancillary jurisdiction also provides the basis for constructing a more comprehensive Section 255-like approach which would ensure access to communications technologies, equipment, and networks including IP-Enabled communications. Indeed, the Commission asserted this jurisdiction when it concluded that two information services – interactive voice response systems and voice mail were essential to the completion of communications under the scope of Section 255. The multiple platforms and equipment essential for the completion of communication in the world of IP-enabled communications make it certain that, absent extension of

⁵ Comments of RERC on Telecommunications Access WC Docket 04-36, p.18

⁶ BellSouth, Qwest, SBC, Verizon Docket 04-36, p. 24.

Section 255 requirements, the new paths necessary for communication will not be open and advanced communications services will not be available to all consumers as envisioned by the doctrines of universal service.

We are pleased to support the comments of the RERC with respect to the Commission's statutory authority, especially with respect to its ancillary jurisdiction.

The Commission has never questioned the fact that safeguarding the accessibility of people with disabilities to communications services falls within the execution of its statutorily prescribed functions. In its Section 255 proceeding, the Commission exercised ancillary jurisdiction over two information services – interactive voice response systems and voice mail. The FCC concluded that these services were so essential to the ability of persons with disabilities to effectively communicate, that the failure to require their accessibility would undermine Congress's interest in ensuring telecommunications access under Section 255.⁷

IP-ENABLED SERVICES REQUIRE A MODIFIED COMPLAINT PROCESS

Our original filed comments in this proceeding advised the Commission of our concerns with respect to the fact that almost all of the information critical to resolving complaints remains within the control of the company that has allegedly failed to provide equipment or service in compliance with Section 255. A review of the comments filed by organizations of and for individuals with disabilities indicates that the complexity of equipment and service provider relationships and responsibilities in the IP-Enabled environment along with the legacy definitions of telecommunications and information services can render the current process even less workable. The example provided by the RERC is instructive:

If the FCC continues to carve up what are becoming indistinguishable communications functions into these artificial categories, services with virtually identical functions may or may not have to be accessible, depending solely on the technology used to carry them or the networks used to connect them.⁸

While the Commission may have its reservations about the proper reach of regulation, our review of the filed comments and telecommunications media reporting, shows that the flow of information across platforms along with the multiple technologies used to initiate and complete new forms of communication will make a complaint process based on the regulatory reach of legacy frameworks totally unresponsive to anybody's needs. As of this day, people who are blind or visually impaired still have to negotiate inaccessible operation manuals, user and installation guides, and generally uninformed technical support services in order to determine if there is a basis for complaint. Absent a more comprehensive approach, a blind or visually impaired consumer will need to resolve whether the call is being completed over wireline, wireless, cable, or even satellite platform, before deciding whether a complaint is in order and then determine the entity responsible for the lost portion of the call or the unworkable equipment. Here we ask that the Commission simply consult the level of complaints generated by shifts from wireless carriers or attempts to cancel and make new connection to long distance or local carriers. At least this universe of carriers is comparatively well known. However any consumer who has encountered difficulties can attest to the blame shifting and lack of accountability.

⁷ RERC, p.38

⁸ RERC, p.25.

We close by again complimenting the Commission on its attempts to outline a very complex regulatory issue. Complexity should not drive the Commission away from the task of regulation or to regulate by half-measures. Should the Commission delay or restrict its regulation, people who are blind or visually impaired will be left hanging on to the old PSTN while all around them move to use integrated, multi-platform systems as ubiquitous and flowing as electricity.

Respectfully submitted,

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